

# Have You Heard the One About the Farmer's Daughter?

## Gender-bias in the Intergenerational Transfer of Farm Land on the Canadian Prairies

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*Les fermes dans les prairies canadiennes sont léguées traditionnellement de père en fils afin d'en assurer la viabilité. Ce transfert intergénérationnel limite l'accès aux filles de ces agriculteurs surtout quand elles désirent agir indépendamment dans leur communauté. Cet article explore cette discrimination et examine la construction d'une fiducie comme un moyen de redresser cette injustice.*

In Canadian rural culture, the “farmer’s daughter” joke has been around forever.<sup>1</sup> Predictable and formulaic in nature,<sup>2</sup> these jokes are not sophisticated—the plot involves the seduction of the daughter by the stranger/traveling salesman while the humour is interjected when it turns out that the father, and perhaps the daughter herself, has manipulated the stranger into marriage.<sup>3</sup> The father is seen to be successful in turning the tables on the young man.

Why would anyone find this funny? Looking at the nature of jokes; the act of telling a joke tests if the audience displays the shared knowledge or social values imparted by the joke.<sup>4</sup> The farmer’s daughter joke would not be funny if one did not share certain perceptions of the farmer and his daughter. Humour is found in the incongruity of the expected result and the punch line in the joke<sup>5</sup>—we laugh at the unexpected. The underlying subtext is, however, that the daughter must rely on her cunning, physical attractiveness, and manipulative father to “trap” a husband and thereby secure her economic future. All of these jokes are premised on the idea that there is a need to marry off the daughter so she is no longer a burden on the farm’s economic viability.

Jokes such as these are a manifestation of the powerlessness of the farmer’s daughter in much of Canadian rural culture. On the prairies,<sup>6</sup> farmland is often one of the few means by which to earn a livelihood as well as the largest family-held asset. Farm property is traditionally passed from father to son, often leaving a farmer’s daughter with few resources. In *Radchenko v. Radchenko* the court ac-

knowledgeed that if farmers’ daughters brought any assets at all into the marriage, they were usually few and tended to be consumable when it recognized that this “story is a typical one: the wife brought to the marriage a cow and a heifer.”<sup>7</sup> This pre-marital economic disparity has far-reaching implications for farm women.

In the rural, male-dominated and often traditional environment, the farmer’s daughter is particularly vulnerable. It is this pervasive lack of opportunity that one acknowledges, subconsciously or not, in finding humour in the farmer’s daughter joke. This article will explore how traditional property rights, gender-specific property transfer/inheritance practices, and a patriarchal culture have come together on the Canadian prairies to create a systemic gendered disempowerment of women in general and farmers’ daughters in particular.<sup>8</sup>

Acquiring property rights is a particularly important human rights issue<sup>9</sup> because without property rights, individuals are unable to effectively exercise other human rights.<sup>10</sup> Inequality in land ownership is a major hindrance in correcting internationally recognized problems women face such as generally inferior economic status.<sup>11</sup> Typically, Canada is not perceived as a country where such infringements exist.<sup>12</sup> There are no formal legal restrictions to women acquiring property in Canada, in part due to legal and political recognition in the first few decades of the twentieth century and subsequent legislative changes.<sup>13</sup> Law reform, however, does not operate in a vacuum independent of the various social relations, and patriarchy is one such set of relations.

The material base of patriarchy involves, in part, men’s control over women’s access to means of livelihood. This control is maintained through an economic dependence on males, i.e., by restricting access to productive resources or subsistence activities.<sup>14</sup>

On the Canadian prairies, the patriarchal power base is

closely connected to the male-dominated ownership of the primary resource, farmland, and the resulting opportunities for income generation. Without equal property rights, such opportunities are severely restricted in rural locations.<sup>15</sup>

It is not an uncommon assumption, that the son will inherit or take over his father's farming enterprise. This assumption resonates in the various materials available to assist the aging farmer in developing an intra-family succession plan; focusing heavily on the son or sons as the identified potential successors to the family farm.<sup>16</sup> In a study of Canadian farming operations, it was found that "farm families still look to their male children to take over the farm operation."<sup>17</sup> Canadian farm succession is thus a gender discriminatory process historically designed by men for the benefit of men.<sup>18</sup>

The development of Canada's parochial property transfer regime is historically founded in feudalism, aristocracy, and the British common law doctrine. In the British system, primogeniture<sup>19</sup> was seen to be an essential virtue at the heart of the nation's life. The well-being of agriculture, the stability and good sense of English political life, the very British constitution, were claimed to be dependent upon it.<sup>20</sup>

The concept of primogeniture and the desire for maintenance of an intact and economically viable farm infuses much of the social fabric of the modern farming community. Members of the farm family often have deep emotional commitment to the type of life represented on the family farm. Rural parents feel farm life contributes to emotional stability, personal integrity, and domestic tranquility, with the focus on ensuring prosperity and maintaining the farm as a unit at the heart of any family farm operation.<sup>21</sup> All effort centers on the farm and so by extension, it becomes all about the father, the son or the brother.<sup>22</sup> Anyone who does not share in this goal or in any way interrupts a smooth land transfer risks alienation from both their family and their community.<sup>23</sup>

Many farm people have life-long ties with their family, friends, and community. There is an "intimate connection with land, animals, neighbours, communities, and spirituality that have been the tradition of family farming."<sup>24</sup> Intimately intertwined in this sense of history and community is the almost palpable connection with the land. There is a link between the physical environment and the rural lifestyle, and rural residents feel protective towards both.<sup>25</sup> The idea of stewardship, maintaining and improving the land in an effort to ensure the survival and prosperity of the next generation, is a central and pervasive attitude in rural farming.

Families in agriculture form the bedrock of modern agriculture because of the heritage of farming skills and knowledge being passed on from one generation to the next, along with the opportunity to farm. Farming requires tremendous commitment to work

and long term goals, a socialization to a way of life, an asset base of land and machinery that is usually intact because of family inheritance and intergenerational co-operation.<sup>26</sup>

The patriarchal tradition of transferring the land to the younger males has been viewed as the primary method by which to ensure the family farm is passed on to subsequent generations.

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ated businesses. Despite policy issues favouring the preservation of the family farm,<sup>27</sup> the number of farms has declined significantly in Canada over the last two decades. We are seeing larger farms<sup>28</sup> run by fewer and fewer farmers.<sup>29</sup> With the increase in average acreage, there has been a parallel rise in the average value of the farm as well.<sup>30</sup> Although many Canadians hold an idealistic and romanticized picture of the simplistic farm, the reality is that farming in the Canadian Prairies is much less of a lifestyle and should be compared more accurately with big business.<sup>31</sup> For the most part, these parcels of farmland are held and controlled by men.<sup>32</sup>

Farm women are in many respects excluded from taking on the role of economic actor in an occupation of considerable importance.

Traditionally, Canadian culture has been reticent to recognize women as farmers in their own right. Agriculture in Canada is regarded as a male domain, where farmers and farm labourers are commonly presumed to be male,<sup>33</sup> resulting in women's and girl's work in primary agriculture being overlooked and minimized.<sup>34</sup> In order to survive, people who are not economic actors must attach themselves to people who are. In that situation, it is difficult, if not impossible, for a woman to exercise any right in a way that risks estranging her from that farmer, be he her father or her spouse.<sup>35</sup> This reality keeps rural farm women and girls in inferior positions within marriages, families, and society.

It was not until 1991 that the Canadian Census of Agriculture recognized up to three operators per farm.<sup>36</sup> Before this, women were recognized as farmers' wives: they were not able to adopt the title of farm operator while a male held or shared title to the farmland.<sup>37</sup> The 1991 Canadian Census change provided for a more comprehensive profile of the women involved in Canadian agri-

culture, opening the door to women being recognized as farmers, although the reality is that numbers are still very low when looking at women who are sole operators of farms.<sup>38</sup>

There are three clear situations which demonstrate gender discrimination in the transfer of land title in prairie farmland: the first example of this occurs where there is only one female family member interested in the family farm and the older generation chooses to transfer the land to a disinterested male child rather than leave the land to their child who has expressed an interest in farming. The

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second identifiable gender discrimination occurs in situations where none of the younger generation have an interest in farming the land, but the land is still passed only to the males in the family. In this situation, the son(s)' only intention is to liquidate the farmland and benefit financially from the sale. The third situation involves the division of matrimonial assets at the time of marriage breakdown. Each of these situations will be explored and I will suggest one potential remedy.

The first scenario: that of the unmarried single farmwoman and the agriculturally disinterested male sibling suggests a more nuanced and certainly less transparent layering of discrimination. To understand the layering of the discrimination, one has to appreciate some of the unstated influences at play. For the most part, in the traditional rural communities, young women who wish to remain in their rural location aspire to marry and have their own family farm where they will work alongside their spouse. Occasionally, a widow will carry on farming the land following the death of her spouse, but it is unusual for a young unmarried woman to farm independently or in partnership with her parents or brother.<sup>39</sup> To make this choice would be seen as highly unusual and would certainly come up at the local coffee shop as a topic of conversation amongst the local farmers. Were a young man to choose to farm alone, or in partnership with his parents, this would not raise the same line of inquiry.

Grounded in the traditional arguments supporting transfer to the male child as a means to ensure the ongoing economic viability of the family farm, this refusal to acknowledge the child who is committed to farming and maintaining the economic viability of the family farm and instead transfer land to an disinterested male child makes no sense. It only makes sense if one shares in the belief that the farmwoman is inadequate or unable in some way to act

as a steward of the land.

The second scenario involves land that is or will be put up for sale as none of the younger generation have expressed interest or been able to maintain an economically viable farm operation, leaving no family member to transfer the farmland to. It makes no equitable sense to transfer the farmland to only the male members of the younger generation. In these cases, the liquidation of the family farm is a foreseeable reality resulting in the inheritance and transfer decisions being effectively the distribution of cash assets.

Here there remains an illogical refusal to distribute either farmland, or the proceeds from the sale of this land, to the farmers' daughters. Current research has noted that keeping the farm in the family is more important to men than to women, suggesting this is connected to the asset transfer to the males.<sup>40</sup> The younger males have more to lose if gender equity were to influence land transfer arrangements.

The fact remains that for most women on the Canadian Prairies, if they want to farm, the majority of farmers' daughters still have to marry a farmer to achieve this goal. Although marriage often provides the farmer's daughter with an opportunity to remain in the community of her birth as well as a means by which to actively participate in a farming operation, it is clearly not a means by which to end the gendered economic disparity. It is here, in marriage, that we see further erosion of the farmwoman's economic independence, which is most clearly evident in the event of a marriage breakdown. Despite considerable focus and attempts at reform, the matrimonial property regime continues to function in a manner that is patriarchal in nature. Since traditional marriage roles typically meant that the property was usually paid for by the husband and taken in his name, at marriage breakdown the non-titled spouse often had no legal entitlement to the property. In order to mitigate the harshness of this result the courts attempted to fashion a more equitable remedy through the application of the resulting and "constructive trust." The resulting and constructive trust is a legal fabrication designed to correct blatant legal inequities that have allowed one party to essentially get something for nothing, while the deserving party is left with little or nothing.<sup>41</sup>

Through the application of a resulting trust analysis, a property interest of a non-titled spouse could be recognized based on a direct contribution to the purchase price of the farm<sup>42</sup> or a more indirect contribution such as paying for household expenses.<sup>43</sup> This all changed in 1975.<sup>44</sup> Although the labour of the non-titled spouse may have contributed to the maintenance and enhancement of the land, if the property was acquired by a spouse before marriage, by gift or inheritance from a third party, it was exempted unless it was intended as a gift to both parties. Analysis of these inheritances or gifts shows that these were primarily from the husband's family.<sup>45</sup> Jean Keet

analyzes how divisions of the pool of assets, third party contribution, capital base, and tax liability are all related to the ownership of real property, land in particular, and all have been used as justification for awarding a less than half share of the available matrimonial property to the wife.<sup>46</sup> Consequently, the economic disparity between the spouses that existed before the marriage continued to influence the operation of the 1980 *Matrimonial Property Act*.<sup>47</sup> The Saskatchewan Law Reform Commission was struck and in 1985, amid considerable controversy, it adopted certain reforms.<sup>48</sup> One of these was a change to the treatment of increases in property value due to market forces or inflation. The reform was to share the inflationary increases only where the marriage was long.

This “reform” was seen as contributing to the non-property-owning spouse being left with little property ... aggravating the “injustice” occurring where capital assets were predominately transferred from father to son ... the bias in favour of property-owning farm husbands revealed in the operation and previous judicial interpretation of the 1980 Act was thereby entrenched in the new legislation.<sup>49</sup>

It seems, at least in Saskatchewan, that a farmwoman often has no access to becoming her own economic actor even if she does marry a farmer. At marriage breakdown the division of assets under the Saskatchewan legislation is often inequitable and implemented in a manner that clearly intends to preserve farms and protect the livelihoods of the husbands.

While this legislative “reform” was underway, the Supreme Court was developing the use of the principle of unjust enrichment<sup>50</sup> and the remedy of constructive trust in property disputes of this nature. Unjust enrichment is recognized where

[t]he requirements needed to establish unjust enrichment, the principle lying at the heart of the constructive trust, were: an enrichment, a corresponding deprivation and the absence of any [legal] reason for the enrichment.<sup>51</sup>

This remedy has been analyzed extensively by the courts in matrimonial and quasi-matrimonial cases where the application of a constructive trust can remedy this unjust enrichment. Kim Korven has posited that a constructive trust hybrid may “potentially be extended to protect the rights of farm ‘children,’ both minors and adults, who are working on their parents’ farm with expectations of acquiring interests in the operations.”<sup>52</sup>

In order to apply an equitable remedy, one must look at how the court has recognized unjust enrichment as a cause of action and the remedial constructive trust as an appropriate legal instrument for resolving land transfer inequity between sons and daughters. On the farm, all family

members contribute to the farming operation while only one member, typically the father, receives all the farm income and has title to the farm property.<sup>53</sup> This contribution to the preservation or improvement of the property is legally recognized as a means of enriching the titled farm owner.<sup>54</sup> When a child is a minor and working on the farm, the tasks are part of their training or apprenticeship, a means by which farming knowledge is passed on to the younger generation. The kind of work farmers’ daughters are allowed to do depends largely on what kind of work their families see as appropriate for girls. With farmers’

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daughters there is often a lack of encouragement and hence lack of education about farming, creating a major obstacle to women attempting to enter the agricultural industry.<sup>55</sup>

Traditionally, parents expect that one of their children will farm the land that may have been in their family for generations. “While farm children are minors, they do not control the extent of their involvement in farm operations; farm work is usually a fact of life which pre-dates adolescence.”<sup>56</sup> In a survey of agricultural youth work, when discussing the range of tasks they were involved in, farm youth explained that “the work on the farm needs to be done, and they will do it with or without being told by their parents.”<sup>57</sup> Detailed analysis suggested that sons are “more frequently taught by their fathers to operate vehicles and large machinery and are usually considered to be more interested in field work than female youths.”<sup>58</sup> At the same time, both male and female youth spent approximately the same number of hours per day on livestock chores.<sup>59</sup> As traditional gender roles suggest, daughters spend significantly more time on household domestic tasks<sup>60</sup> than do farm sons. There was no significant difference in the amount of time farm sons and daughters spent each day on all types of work, although when compared with youth in the general population, farm youth spend about 2.7 hours more per day on all work.<sup>61</sup> Farming is not an easy life.

It is clear that the experiences of farm children are similar to those of the farm women whose cases shaped the development of the constructive trust doctrine,<sup>62</sup> making it possible for farmers’ daughters to satisfy the requirements for unjust enrichment and a constructive trust remedy. Farmers’ daughters direct their activities and contributions to property owned by another family member, creating a causal connection or “clear link” between

her contributions and the enrichment of the property held by her parents.

The Supreme Court has held that a constructive trust is retroactive, therefore the unjust enrichment may date from the time that the daughter was a minor; she may obtain a proprietary interest in the farm by meeting the requirements of unjust enrichment and constructive trust in her mid- to late-20s.<sup>63</sup>

Clearly the application of a constructive trust analysis is not without potential disappointments. The court may be hesitant to interfere with the distribution of domestic duties and work tasks, so long as the relationship is healthy, given the nature of the family relationship and the recognition accorded to the supremacy of parental authority. Secondly, although there has been some quantitative analysis of the work done by farm children, the court may wish to see documentation of contributions of the child before such a claim is recognized. A further problem may be found where a daughter dates her claim from childhood, as there are no objective guidelines for what constitutes unjust enrichment in such a situation. The claimant must establish that her labour, however typical it might be, enriched her titled parent or her brother(s) and caused her to suffer a deprivation because she has not attained a proprietary interest in the farm.<sup>64</sup>

The final element that the daughter has to establish is the lack of juristic justification—the most difficult hurdle to clear. Katy Bennett acknowledges that, disconcertingly, “women are apparently defensive and protective of cultures and traditions riddled with patriarchal gender relations that oppress them both.”<sup>65</sup> To clear this barrier, the court must affirmatively answer, “the specific question of whether the claimant reasonably expected to receive an actual interest in the property and whether the respondent was or reasonably ought to have been cognizant of that expectation.”<sup>66</sup> Korven states:

One expects that a child will take control of the farm when her parents retire. People assume that the child is male; therefore, a court may be unwilling to believe that the female claimant’s expectation of obtaining a proprietary interest was reasonable. Correspondingly, a court may be unwilling to recognize that the claimant’s parents could reasonably be expected to be cognizant of their daughter’s expectations.<sup>67</sup>

The argument has come full circle. Discrimination exists in a patriarchal society, empowering farmer’s sons at the expense of the daughters, and of the few remedies available, the application of a constructive trust may not be applicable. In order to be able to use it, you have to show there was an expectation of an equally shared farmland title, regardless of gender. Generations of farm women have always known that there would never be anything on the farm for them and have recognized that their labour only benefits the property interests of their brothers.

Generations of farmers’ daughters continue to accept this reality, making the application of this remedy difficult, if not impossible. Many farmers’ daughters have been raised knowing there was never going to be land left in their name and therefore the application of this “manmade” remedy is weakened.

The Supreme Court has applied a constructive trust remedy in the recognition of the farm women’s contributions that have benefited their titled spouse where the women have suffered a corresponding deprivation. The work that farm women have contributed to the farming operation is no different, in many situations, from those contributions made by their daughters. “Farm work is extensive and deserves the recognition accorded it through a proprietary remedy such as the constructive trust if the relationship terminates.”<sup>68</sup> As with the farmwoman’s labour and financial contributions to the family farm operations, the children’s work is often essential to the farm’s viability.

In an environment that consistently devalues the contributions of farm women, this remedy may be difficult to apply successfully. There are few other alternatives. If daughters want to farm independently and choose to raise a legal claim to this right, they risk being alienated and ostracized by their community and family. Should they not choose to go this route they have few economic or career options but to leave the farm, their community and a way of life that is all many have ever known.<sup>69</sup> Their male sibling is often gifted with the farm and the economic opportunity it brings, a way to remain in their community with the friends and family they have known all their lives and the recognition by their parents of their “right” to carry on the family operation. Both children have worked on the farm throughout their childhood, adolescence and into young adulthood. Only the contributions of one are recognized and compensated. It is, as one farmwoman succinctly put it “a really hard pickle” for many a farmer’s daughter.<sup>70</sup> Many farmers’ daughters are leaving with little more than their forbearers—“a cow and a heifer.”<sup>71</sup> Not wanting to alienate themselves from family and friends, farmers’ daughters opt to make their own way. Debra Marquart recognizes this in her poetry:

And so agriculture sustains itself and is sustained.  
Section lines weave and criss-cross at every turning...

...Farmers do not mean to be so possessive; they’re just punctuated that way. And farmer’s daughters must struggle against the powerful apostrophes of their fathers. They must drive away some spring morning, hands planted firmly on the wheel, convinced they will never look back.<sup>72</sup>

It is within the acceptance that “what will be, will be” and the impotence that the farmer’s daughter experiences, that an impetus for change is born. This empowerment has been named “conscientization”—the taking control

of one's own life and developing an understanding of the social, religious, and cultural restrictions that limit one's potential for personal development.<sup>73</sup> These women, in opting to leave the farm, indicate and affirm that they have the strength to stand-alone. "It is learning how to stand alone, unpopular and sometime reviled, and how to make common cause with those others identified as outside the structures of order to define and seek a world in which we can all flourish."<sup>74</sup> This may come as farm women are empowered, much as they were by their public outcry following the *Murdoch* decision, and chose to demand their share of their farm. Farmers' daughters must look beyond their fathers and their brothers for the approval, support, and strength to challenge the patriarchal structures found on the Prairie farm.

*As a farmer's daughter myself, I found that much of this research resonated for me. Originally from the prairies, I left to pursue other challenges many years ago—but Saskatchewan will always be in my blood. While completing my LL.B. at the University of Ottawa, Prof. Elizabeth Sheehy in her "Law and Society: Women and the Legal Profession" course led me to write this article. My personal views and those of the women interviewed inspired me to seek to have this paper published and be heard. Presently working on my Master of Laws degree, I am also articling with a labour and employment boutique law (Union side)—trying to "fight the good fight".*

<sup>1</sup>It has even been the focus of psychological study. See E. K. Clowes, "Oedipal Themes in Latency. Analysis of the 'Farmer's Daughter' Joke" (1996) 51 *Psychoanalytic Study of the Child* 436.

<sup>2</sup>Debra Marquart, "The Farmer's Daughter: A Revision" (2002) 10 *Arts & Letters Journal of Contemporary Culture* 1.

<sup>3</sup>There are many farmers' daughter's jokes that have been told and re-told for many years. Most rural Canadians would have experience with the predictable nature of these jokes. Although there is a considerable range in the explicitness of the jokes themselves, they are all very formulaic. See Joke Archive, online at <[http://www.evula.com/jokes/farmers\\_daughter.html](http://www.evula.com/jokes/farmers_daughter.html)>.

<sup>4</sup>There is also a line of thought that suggests that jokes are intimately concerned with competition. See G. Cook, *Language Play, Language Learning* (Cary, N.C.: Oxford University Press, 2000).

<sup>5</sup>D. Tannen, *That's Not What I Meant: How Conversational Style Makes or Breaks a Relationship* (New York: William Morrow Publishers, 1986).

<sup>6</sup>Although referring generally to the Canadian prairies, the bulk of the research for this article originates from Saskatchewan.

<sup>7</sup>(1981), 11 Sask.R. 24 at 25 [Radchenko].

<sup>8</sup>Some of the information presented in this article was gleaned from a series of interviews I conducted with farm women and the daughters of farmers in late 2004. The

National Farmer's Union provided me with a number of names and contacts of women who they knew to be interested in the issues I was considering in my research. All of the interviews were conducted over the telephone with a number followed up by email communication.

<sup>9</sup>Article 17 of the *Universal Declaration of Human Rights*, 10 December 10 1948, G.A. Res. 217A (III), U.N. GAOR Res. 71, U.N. Doc. A/810 (1948). states that "[e]veryone has the right to own property alone as well as in association with others" and "[n]o one shall be arbitrarily deprived of his property." Generally, this right is recognized as a human right, see *Restatement (Third) of Foreign Relations Law*, § 711, Comment (d) at 187 (1987).

<sup>10</sup>Marsha Freeman, "The Human Rights of Women Under CEDAW Convention: Complexities and Opportunities of Compliance" (1997) 91 *American Society of International Law Proceedings* 378. Due to the length limitation of this article, the application of Human Rights Legislation and the farm property transfer will not be explored although when looking internationally there are considerable similarities to be drawn between the Canadian prairies and many other countries.

<sup>11</sup>Kenneth G. Dau-Schmidt, "Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of Cooperative Production?" (1996) 4 *Indiana Journal of Global Legal Studies* 51.

<sup>12</sup>Canadians experience one of the highest standards of living anywhere in the world. The United Nations ranked Canada fourth on its Human Development Index in 2004. Canada has established a reputation for outstanding living conditions, earning the UN's top ranking for seven consecutive years, from 1994 to 2000. The country's standard of living, health care system, educational attainment, housing, cultural and recreational facilities, level of public safety and tourist opportunities are all of an exceptionally high quality. See, *United Nations, Human Development Report 2004 Cultural Liberty in Today's Diverse World* (New York: United Nations Development Programme, 2004).

<sup>13</sup>As with much of the Canadian prairies in Saskatchewan *The Married Woman's Property Act*, S.S. 1907, c. C-18 was amended in March of 1975 to allow almost complete judicial discretion in determining the division of married persons' property with legislative changes introduced by *An Act to Amend the Married Women's Property Act*, S.S. 1974-75, c. 29, s. 22. See also Albie Sachs and Joan Hoff Wilson, *Sexism and the Law* (Oxford: Martin Robertson, 1978) 4-40.

<sup>14</sup>Jean E. Keet, "The Law Reform Process, Matrimonial Property, and Farm Women: A Case Study of Saskatchewan, 1980-1986" (1990) 4 *Canadian Journal of Women and the Law* 168.

<sup>15</sup>The Canadian Government recognized that one of the biggest hindrances to women in small businesses has been access to financing. See, Heritage Canada, Human Rights

Program Part II: Measures Adopted by The Government Of Canada, Article 13(b) online: Heritage Canada <[http://www.pch.gc.ca/ddp-hrd/docs/cedaw/fd\\_e.cfm](http://www.pch.gc.ca/ddp-hrd/docs/cedaw/fd_e.cfm)> and see also *Convention on the Elimination of All Forms of Discrimination against Women*, Adopted by General Assembly resolution 34/180 of 18 December 1979, Entry into force 3 September 1981, in accordance with Article 27(1), online: Canadian Heritage <[http://www.pch.gc.ca/ddp-hrd/docs/cedaw/cn\\_e.cfm?nav=2](http://www.pch.gc.ca/ddp-hrd/docs/cedaw/cn_e.cfm?nav=2)>.

Deborah Fink in *Open Country, Iowa: Rural Women, Tradition and Change* (Albany: SUNY Press, 1986) examined the manner in which women lost control of poultry production in Iowa because they did not have access to capital and credit and therefore could not increase production to compete with larger scale producers. As well Amy Trauger recognized that access to credit and capital was crucial to a farmwoman's success. Of the three women she interviewed in her article "Women Farmers in Minnesota and the Post-Productivist Transition" (2001) 8:2 *The Great Lakes Geographer* 53 at 64-65, one woman's application for credit was refused, ostensibly because she was unmarried while of the other two women, one did not require external financing and the other farmed in conjunction with her father and brother, who could obtain loans. See generally Carolyn Sachs, *Gendered Fields: Rural Women, Agriculture and Environment* (Boulder: Westview Press, Inc., 1996).

<sup>16</sup>See John Baker, Michael D. Duffy and Adrienne Lamberti, "Farm Succession in Iowa" online: Iowa State University Extension Publication <<http://www.extension.iastate.edu/bfc/pubs/FarmSuccession.pdf>>.

<sup>17</sup>*Farming and Change* at 126 online: St. Peters Community <<http://www.stpeterscollege.ca/crse/epff/pdf/0104Chapter%207.pdf>> [*Change*].

<sup>18</sup>As Lisa Philipps points out, wealth distribution in Canada is highly gendered with women at a serious disadvantage to men in terms of property ownership. This means "the ability to inherit and hold wealth free of tax primarily benefits men, and helps to preserve the economic inequalities which are the hallmark of women's subordination." One of the objectives of a tax system is the redistribution of income and resources from the rich to the poor. If wealth, as constituted by property primarily owned by men, is not part of the personal tax base, any redistribution of wealth is adversely affected by that omission. Because women form the majority of the poor in Canada, they bear the burden of the adverse consequences. See Lisa Philipps, "Tax Policy and the Gendered Distribution of Wealth" in Isabelle Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 16 as cited in the article by Claire F. L. Young, "(In)visible Inequalities: Women, Tax and Poverty" (1995) 27 *Ottawa Law Review* 99.

<sup>19</sup>Primogeniture is defined as "the right of succession belonging to the first-born, esp. the feudal rule by which the whole real estate of an intestate passes to the eldest son"

in *The Canadian Oxford Dictionary*, Thumb Index Ed., s.v. "Primogeniture."

<sup>20</sup>Eileen Spring, *Law, Land & Family Aristocratic Inheritance in England, 1300 to 1800* (Chapel Hill, N.C.: University of North Carolina Press, 1993) at 66.

<sup>21</sup>Steven C. Bahls, "Judicial Approaches to Resolving Dissention Among Owners of the Family Farm" (1994) 73 *Nebraska Law Review* 42.

<sup>22</sup>Interview by the author with Michelle Melnyk, farmer's daughter (15 December 2004). Michelle lives in Edmonton, Alberta and her brother is farming her parent's farm. Michelle described both herself and her younger sister to have an interest in farming but Michelle has recognized that the idea is "so far off the radar screen because [she] does not have a penis" and that "if [she] could [farm] she would but there is no space for [her]."

<sup>23</sup>In a telephone interview with Karen Pedersen and myself (18 November 2004), a researcher with the National Farmer's Union and a farmer in her own right, Karen communicated that in her experience growing up in rural Saskatchewan if a farmer's daughter were to demand an equal division of the farm she would have to be willing to never see her family or her community again. Young women are socialized to not consider their contributions in youth and to not put their interests above that of the family and the farm.

<sup>24</sup>Dr. Val Farmer, "Stewardship of the Farm and Family," online: Saskatchewan Soil Conservation Association <<http://ssca.usask.ca/1999proceedings/Farmer.html>> [*Farmer*].

<sup>25</sup>Barbara Zupko, Judy Shearer, Kristina Vermeulen, *Regional Health Study in the Waterloo Region Interim Report* Waterloo: Region of Waterloo Public Health, (2003), online: Waterloo Public Health <[http://chd.region.waterloo.on.ca/web/health.nsf/0/025B442B71671EF385256D11005058B0/\\$file/Interim%20Report.pdf?openelement](http://chd.region.waterloo.on.ca/web/health.nsf/0/025B442B71671EF385256D11005058B0/$file/Interim%20Report.pdf?openelement)>.

<sup>26</sup>*Farmer*, *supra* note 24.

<sup>27</sup>South of the border, in the United States public policy clearly favors preservation of the family farm. Over a dozen states have enacted legislation prohibiting corporate ownership of farm land with the intention of favoring families as farm owners, see Julian Conrad Juergensmeyer & James Bryce Wadley, *Agricultural Law* (Boston: Little Brown, 1982) at 154-55. Despite this legislative recognition, it is unclear as to what reasons lay behind this public policy. With such a small population, it is unclear as to where the impetus for this legislation originates. There is clearly the family farmers' own interest in reducing competition from large corporate farmers and a somewhat persuasive argument that preservation of the family farm preserves the rural, social and economic structures (see *MSM Farms Inc. v. Spire*, 927 F.2d 330, 333 (8th Cir. 1991) and also more generally, Steven Bahls & Jane Easter Bahls, "Just How Bad is Corporate Farming?" (1991) *Farm Futures* 7) and the idea that maintaining the family farm

promotes responsible stewardship of the land, water and other resources as observed by Carol Ann Eiden in "The Courts Role in Preserving the Family Farm During Bankruptcy Proceedings Involving FmHA Loans" (1993) 11 *Law & Inequality Journal* 423, however these considerations do not seem to be far reaching enough to support the enactment of such legislation.

<sup>28</sup>In 2001, the average farm size was 675 acres, continuing to increase from what it was in both 1996, where the average farm size was about 608 acres, and also larger than the average 499 acres 20 years earlier in 1976. In Saskatchewan the reported average farm size was considerably larger at 1,152 acres in 1996 and continued to increase to 1,283 acres in 2001. See Canadian Federation of Agriculture, *The Canadian Farm* (Ottawa: Canadian Federation of Agriculture, 2004) online: Canadian Federation of Agriculture <[http://www.cfa-fca.ca/english/agriculture\\_in\\_canada/farm\\_structure\\_and\\_finance.html](http://www.cfa-fca.ca/english/agriculture_in_canada/farm_structure_and_finance.html)> [*Canadian Farm*]; See also Statistics Canada, *Agriculture 2001 Census Farm Data: Initial Releases*, online: Statistics Canada <<http://www.statcan.ca/a/english/freepub/95FO301/XIE/tables/pdf/table1can.pdf>> at 1 and 9.

<sup>29</sup>The average Canadian farm is 35 per cent larger than it was 25 years ago. *Ibid.*

<sup>30</sup>With the range of farm land valued at between \$330 to \$4,600 per acre, depending on the location and many other factors, the average farm in Canada can be valued at between \$200,640 to \$2,796,800. Although the assessed value is broad and impacted by numerous factors, it is clear that even at the low end the average farm would be viewed as a considerable financial asset to most Canadians. *Ibid.*

<sup>31</sup>*Ibid.* noting that "[f]arming has become a business that requires, in addition to more traditional agricultural skills, a working knowledge of computer and other high-tech equipment. According to the 1996 census, more than 21 per cent of Canadian farm households own one or more personal computers. Over the last two decades, a positive shift in the level of education of farm operators can be seen. In general, the trend to higher education being observed in Canadian society is also obvious in the farm community." However farming family annual income remains below the average non-farm family income confirmed in the same publication above stating: "In 1995, the last year for which figures are available, the average farm family's annual income was \$53,435. In comparison, the average non-farm family's income in 1995 was \$55,247. This is a difference of 3.3 per cent." More recently, although not directly comparable to the 1995 data, Statistics Canada has released the average total income for farm families in 2002 at \$74,914.00. See *Statistics on Income for Farm Families*, Online: Statistics Canada <<http://www.statscan.ca/english/freepub/21-207-xie/2006000/part1.htm>>.

<sup>32</sup>Based on the 2001 Census of Agriculture, 73.7 per cent of all farm operators in Canada were male while in the Province of Saskatchewan this number was slightly higher

were 77.7 of the farm operators were male. See, Statistics Canada, *2001 Census of Agriculture*, online: Statistics Canada <<http://www.statcan.ca/English/Pgdb/agrc.18i.htm>>. It is worth noting that the province with the largest average acreage for a farm also has a higher than national average ratio of male farm operators.

<sup>33</sup>Marjorie Bursa, "Shortage of Farm Labourers" (1975) 4:2 *Agrologist* 21.

<sup>34</sup>Pamela Smith, "What Lies Within and Behind the Statistics? Trying to Measure Women's Contribution to Canadian Agriculture" in *Growing Strong: Women in Agriculture* (Ottawa: Canadian Advisory on the Status of Women, 1987) at 130 [*Growing Strong*].

<sup>35</sup>Cecilia Medina, "Toward a More Effective Guarantee of the Enjoyment of Human Rights by Women in the American System," in Rebecca Cook, ed., *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994) at 257.

<sup>36</sup>A farm operator is defined as "a person responsible for the day-to-day management decisions in the operation of a census farm or agricultural operation." The 1991 Census of Agriculture was the first in history to gather information on up to three operators per farm in Canada. This change provided a more comprehensive profile of the women involved in Canadian agriculture. The data available provide age, marital status and education, to occupation and income information, as well as farm characteristics. See, *Canadian Farm*, *supra* note 28.

<sup>37</sup>*Growing Strong*, *supra* note 34 at 130.

<sup>38</sup>*Canadian Farm*, *supra* note 28. According to the 1996 Canada census just over 25 per cent of farm operators were women. However only five per cent of the farms have a woman as the sole operator.

<sup>39</sup>Karen Pedersen is one of the rare examples of someone who is successfully farming in an operation involving her parents and male siblings. Karen oversees a honey farm in Cutknife, Saskatchewan. Interview of Karen Pedersen (18 November 2004).

<sup>40</sup>*Change*, *supra* note 17 at 126.

<sup>41</sup>For a more technical definition of this term, *Black's Law Dictionary*, 6th Ed. defines "constructive trust" to be a "trust created by operation of law against one who by actual or constructive fraud, by duress or by abuse of confidence, or by commission of wrong, or by any for of unconscionable conduct, or other questionable means, has obtained or holds legal right to property which he should not, in equity and good conscience, hold and enjoy."

<sup>42</sup>*Re Whiteley* (1974), 4 O.R. (2d) 393, 48 D.L.R. (3d) 161 (C.A.).

<sup>43</sup>*Madisso v. Madisso* (1975), 21 R.F.L. 51, 11 O.R. (2d) 441 (C.A.), leave to appeal refused (1975), 11 O.R. (2d) 441n (S.C.C.).

<sup>44</sup>It was not until 1975 when the Supreme Court of Canada in *Murdoch v. Murdoch*, [1975] 1 S.C.R. 423, that this fragile legal house of cards came tumbling down.



Although the trial court heard Ms. Murdoch describe the nature of the work she did as “anything that was to be done,” including “[h]aying, raking, swathing, moving, driving trucks and tractors and teams, quietening horses, taking cattle back and forth to the reserve, dehorning, vaccinating, branding, anything that was to be done. I worked outside with him, just as a man would...” they upheld the trial judges’ finding that what she had done was nothing more than the work done by any ranch wife. Therefore, a presumption of a resulting trust could not be raised. Her labour was not a direct contribution to the property.

<sup>45</sup>*Keet, supra* note 14 at 179.

<sup>46</sup>*Ibid.* at 181.

<sup>47</sup>*The Matrimonial Property Act*, S.S. 1980, c. M-6.

<sup>48</sup>Saskatchewan Law Reform Commission, *Proposals* (1985) 16.

<sup>49</sup>*Keet, supra* note 14 at 185, 187.

<sup>50</sup>Generally, the idea of the doctrine of “unjust enrichment” is premised on the idea that at the end of the day, law and the application of laws should be fair and equitable. *Black’s Law Dictionary*, 6th Ed. defines the “unjust enrichment doctrine” to be a “general principle that one person should not be permitted to unjustly enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involved no violation or frustration of law or opposition to public policy, either directly or indirectly.... Three elements must be established in order to sustain a claim based on unjust enrichment: A benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.”

<sup>51</sup>*Pettkus v. Becker*, [1980] 2 S.C.R. 834, 117 D.L.R. (3d) 257, 34 N.R. 384, 8 E.T.R. 143, 19 R.F.L. (2d) 165 at 834 [*Pettkus* cited to S.C.R.].

<sup>52</sup>Kim S. Korven, “Returning to Its Rural Beginnings: Unjust Enrichment and the Constructive Trust From the Perspective of the Farm Child” (1993) 57 *Saskatchewan Law Review* 429 at 431.

<sup>53</sup>To a certain extent, although the male head of the farm often holds the Canadian Wheat Board Permit books in their own name, many farms effectively are only marginally viable and produce only enough to sustain and maintain the land and the farming operation. Farming is not a “license to print money” and many farmers, regardless of their gender operate very near the poverty line.

<sup>54</sup>*Sorochan v. Sorochan* (1986), 2 R.F.L. (3d) 225 (S.C.C.) at 239.

<sup>55</sup>Gloria Leckie, “‘They Never Trusted me to Drive:’ Farm Girls and Gender Relations of Agriculture Information Transfer” (1996) 3:3 *Gender Place and Culture* 309.

<sup>56</sup>*Korven, supra* note 52 at 431.

<sup>57</sup>Diane J. F. Martz & Ingrid S. Brueckner, *The Canadian Farm Family at Work: Exploring Gender & Generation* (Muenster, SK: St. Peter’s College, 2003) at 64.

<sup>58</sup>*Ibid.* at 64.

<sup>59</sup>*Ibid.* at 65.

<sup>60</sup>“Those daily tasks that are completed within the home including: meal preparation, shopping, cleaning, seminars and workshops, vegetable gardening, and canning and freezing.” *Ibid.* at 67.

<sup>61</sup>*Ibid.* at 68-69.

<sup>62</sup>*Murdoch v. Murdoch, supra* note 44, *Sorochan v. Sorochan, supra* note 54, *Pettkus v. Becker, supra* note 51, *Rawluk v. Rawluk* (1990), 23 R.F.L. (3d) 337 (S.C.C.). See also *Korven, supra* note 52.

<sup>63</sup>*Korven, ibid.* The Supreme court has recognized that twelve years is a sufficient period to justify using the remedy of the constructive trust in the family law context when in *Peter v. Beblow*, [1993] 1 S.C.R. 980 at 1014, Cory J. noted: “Twelve years is not an insignificant period of time ... in a relationship based on mutual trust and confidence. In those circumstances, there is a strong presumption that the services provided by one party will not be used solely to enrich the other. Both the reasonable expectations of the parties and equity will require that upon termination of the relationship, the parties will receive an appropriate compensation based on the contribution each has made to the relationship.”

There is a certain amount of controversy regarding the interpretation of the courts’ statements on when a property interest arising under a constructive trust can be recognized as having come into existence as discussed by Mcleod, “Annotation to *Rawluk v. Rawluk*” (1990) 23 R.F.L. (3d) 337 and also see D.W. M. Waters, “The Constructive Trust in Evolution: Substantive and Remedial” (1990-91) 10 *Estates and Trusts Quarterly* 334.

<sup>64</sup>*Korven, supra* note 52.

<sup>65</sup>Katy Bennett, “A Time for Change? Patriarchy, the Former Coalfields and Family Farming” (2004) 44:2 *Sociologia Ruralis* 147 at 163.

<sup>66</sup>*Sorochan, supra* note 54 at 241.

<sup>67</sup>*Korven, supra* note 52.

<sup>68</sup>*Ibid.*

<sup>69</sup>As the farming population decreases, with the continuing adoption of new technology in agriculture enabling more and more productions from the given land base, there are fewer and fewer people actually farming. As people move away to urban areas, some rural communities struggle to maintain services in a decreasing population. Women who wish to remain in the community, see that the dwindling population reduces their opportunities for alternate career opportunities or a source of income independent from their family farm and are often left with few local employment opportunities. [See Statistics Canada *Canadian Agriculture at a Glance* (Ottawa: Minister of Industry, 2004) at 121]. Mothers spoke of their concerns

in having their sons take over the farm, recognizing that there were almost no opportunities in the area for them to meet and marry a woman as daughters were often leaving and few "city girls" were interested in farm life. These older generation farm women shared their loneliness in not having their own daughters nearby and the sense of social isolation they experienced as they grew older and their female contemporaries passed away. See R. D. Bollman, "Rural Saskatchewan: Is There A Future?" (Address to the Statistics Canada Conference, 17 March 1993) [unpublished] as quoted in Kim S. Korven, "Returning to Its Rural Beginnings: Unjust Enrichment and the Constructive Trust From the Perspective of the Farm Child" (1993) 57 *Saskatchewan Law Review* 429. See also Ray D. Bollman, *Rural and Small Town Canada* (Toronto: Thompson Educational Publishing, 1992).

<sup>70</sup>Telephone interview with Michelle Melnyk with the author, (15 December 2004). Michelle's input and insight has been greatly appreciated.

<sup>72</sup>*Radchenko, supra* note 7 at 25.

<sup>72</sup>*Marquart, supra* note 2 at 6.

<sup>73</sup>Liv Toril Pettersen & Hilde Solbakken, "Empowerment as a Strategy for Change for Farm Women in Western Industrialized Countries" (1998) 38:3 318 at 322.

<sup>74</sup>Audre Lorde, *Sister Outsider: Essays and Speeches* (Freedom, CA: Crossing Press, 1984) at 112.

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...with one another to share information and resources

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...and bringing their voices forward to influence changes in public and industry policy

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...about the experiences of women who live in rural and remote communities around British Columbia

Developing Strategies

...to address the inequalities and isolation faced by women living in a rural or remote community

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